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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 LUCAS R., by his next friend MADELYN
R.; DANIELA MARISOL T., by her next
12 friend KATHERINE L.; MIGUEL ANGEL
S., by his next friend GERARDO S.;
13 GABRIELA N., by her next friend ISAAC
N.; JAIME D., by his next friend REYNA
14 D.; SIRENA P., by her next friend
EDUARDO P.; BENJAMIN F., by his next
15 friend ISABELLA F.; SAN FERNANDO
VALLEY REFUGEE CHILDREN CENTER,
16 INC.; UNACCOMPANIED CENTRAL
AMERICAN REFUGEE EMPOWERMENT,
17

18 Plaintiffs,

19 v.

20 ALEX AZAR, Secretary of U.S.
Department of Health and Human
Services; E. SCOTT LLOYD, Director,
21 Office of Refugee Resettlement of the
U.S. Department of Health & Human
22 Services,
23

24 Defendants.

25 *Counsel for Plaintiffs, continued*

Case No. 2:18-CV-05741

FIRST AMENDED¹
COMPLAINT FOR
INJUNCTIVE RELIEF,
DECLARATORY RELIEF, AND
NOMINAL DAMAGES

(CLASS ACTION)

26 ¹ Because the amendments made herein do not affect the arguments raised in
27 Defendants' pending Motion to Dismiss, the Court should construe Defendants'
28 Motion as one to dismiss this First Amended Complaint in order to avoid needlessly
delaying this action. *See Martin v. Weed, Inc.*, No. 18-cv-00027-TUC-RM, 2018 WL
2431837, at *1 n.1 (D. Ariz. May 30, 2018).

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I.

INTRODUCTION

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3 1. This is an action for injunctive relief, declaratory relief, and nominal
4 damages, challenging certain unlawful policies and practices of Defendant Office of
5 Refugee Resettlement (“ORR”), a subordinate entity within the U.S. Department of
6 Health and Human Services (“HHS”). These policies and practices are causing grave
7 harm to children detained for alleged civil violations of the Immigration and
8 Nationality Act, 8 U.S.C. §§ 1101, *et seq.* (“INA”). Pursuant to § 462 of the Homeland
9 Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135, codified at 6 U.S.C. § 279
10 (“HSA”), and § 235 of the William Wilberforce Trafficking Victims Protection
11 Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044, codified at 8 U.S.C.
12 § 1232 (“TVPRA”), ORR is responsible for the placement, care, custody and release
13 of “unaccompanied alien children.”

14 2. The named Plaintiffs are immigrant and asylum-seeking children
15 detained for alleged civil violations of the INA and are members of the class protected
16 under the settlement in *Flores v. Sessions*, No. 85-cv-4544-DMG (AGRx) (C.D. Cal.)
17 (“*Flores Settlement*”).

18 3. The *Flores Settlement* and TVPRA § 235 oblige ORR to —

- 19 (a) minimize the detention of immigrant children by releasing them to their
20 parents or other qualified custodians so long as their continued detention
21 is not required due to dangerousness or unusual flight risk;
22 (b) place detained immigrant children in the least restrictive setting that is in
23 the best interest of individual children—generally a facility having a
24 state license to care for dependent, as opposed to delinquent, juveniles—
25 for however long they remain in federal custody;

1 (c) ensure that detained immigrant children are held only in facilities that
2 are safe, sanitary and consistent with concern for the particular
3 vulnerability of minors; and

4 (d) ensure to the greatest extent practicable that children who are or have
5 been in ORR custody, except those from contiguous countries, have
6 counsel to represent them in legal matters and protect them from
7 mistreatment, exploitation, and trafficking.

8 4. ORR violates the foregoing requirements, as well as the Due Process
9 Clause of the Fifth Amendment of the U.S. Constitution, the Freedom of Association
10 Clause of the First Amendment to the U.S. Constitution, and Section 504 of the
11 Rehabilitation Act of 1973 by pursuing the following policies and practices:

12 (a) ORR confines children in medium secure facilities, residential treatment
13 centers (“RTCs”), and secure facilities peremptorily, often on bare
14 allegations they are dangerous or pose a flight risk, without affording
15 them a meaningful or timely opportunity to be heard regarding the
16 reasons for such placement;

17 (b) ORR prolongs children’s detention on the ground that their parents or
18 other available custodians are or may be unfit, while affording neither
19 detained juveniles nor their proposed custodians a meaningful or timely
20 opportunity to be heard regarding a proposed custodian’s fitness;

21 (c) ORR places children in residential treatment facilities and detention
22 facilities in which it knows they will be administered powerful
23 psychotropic medications for weeks, months, or years, without
24 procedural safeguards, including seeking informed parental consent or
25 other lawful authorization, even from parents present in the United
26 States.

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- 1 (d) ORR blocks lawyers from representing detained children with respect to
2 placement, non-consensual administration of psychotropic medications,
3 or release to available custodians notwithstanding that Congress has
4 allocated funds specifically to provide such lawyers to represent children
5 who are or have been in ORR custody in “legal matters,” including issues
6 related to release and least-restrictive placement;
- 7 (e) ORR segregates children who have or are perceived to have a behavioral,
8 mental health, intellectual, and/or developmental disability in secure
9 facilities, medium secure facilities, and RTCs, instead of the most
10 integrated setting appropriate to their needs; and
- 11 (f) ORR’s actions prolong the detention of children who have or are
12 perceived to have a behavioral, mental health, intellectual, and/or
13 developmental disability by placing them in restrictive settings
14 associated with heightened administrative barriers to release.

15 5. By this action, Plaintiffs seek equitable relief on behalf of themselves
16 and those similarly situated requiring Defendants to conform their policies, practices,
17 and procedures to the *Flores* Settlement, § 235 of the TVPRA, the Due Process Clause
18 of the Fifth Amendment to the U.S. Constitution, the Freedom of Association Clause
19 of the First Amendment to the U.S. Constitution, and Section 504 of the Rehabilitation
20 Act. Plaintiffs also seek nominal damages against individual Defendant E. Scott
21 Lloyd in his personal capacity pursuant to *Bivens v. Six Unknown Named Agents of*
22 *Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

23 II.

24 JURISDICTION AND VENUE

25 6. This Court has jurisdiction over this action pursuant to Paragraph 37 of
26 the *Flores* Settlement (providing for “the enforcement, in this District Court, of the
27 provisions of this Agreement except for claims brought under Paragraph 24”); 28

1 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 2241 (habeas corpus
2 jurisdiction).

3 7. Plaintiffs’ action for declaratory relief is brought pursuant to 28 U.S.C.
4 §§ 2201 and 2202, and 5 U.S.C. § 703.

5 8. Venue is properly in this court pursuant to Paragraph 37 of the *Flores*
6 Settlement and 28 U.S.C. § 1391(b) and (e)(1), because this action challenges class-
7 wide violations of the *Flores* Settlement, and because acts complained of herein
8 occurred in this district, Defendants have offices in this district, and no real property
9 is involved in this action.

10 9. Plaintiffs have private rights of action against Defendants pursuant to
11 Paragraph 37 of the *Flores* Settlement and the Administrative Procedure Act, 5 U.S.C.
12 §§ 701 *et seq.*

13 III.

14 PARTIES

15 10. Plaintiff Lucas R.² is a native and citizen of Guatemala whom ORR is
16 currently detaining at the Shiloh Residential Treatment Center (“Shiloh RTC”) in
17 Texas. He was born in 2005 and is thirteen years old. Lucas is, and at all relevant
18 times was, an unaccompanied alien child within the meaning of 6 U.S.C. § 279(g)(2)
19 and a member of the plaintiff class the *Flores* Settlement protects. Pursuant to Federal
20 Rule of Civil Procedure 17(c)(2), Lucas appears through his Next Friend and sister,
21 Madelyn R., a resident of Los Angeles, California. Before Tuesday, September 4,
22 2018, ORR refused to release Lucas to his Next Friend and sister on the ground that
23 Madelyn’s home may be unfit. ORR indicated on September 4, 2018 that it would
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26 ² The Court has previously granted permission to use pseudonyms for the named
27 Plaintiffs and their Next Friends. Plaintiffs will promptly seek permission to use
28 pseudonyms for the two new named Plaintiffs and their Next Friends.

1 release Lucas on September 6, 2018. Upon information and belief, as of the timing of
2 this filing, Lucas is scheduled to be released on September 8, 2018.

3 11. Plaintiff Daniela Marisol T. is a native and citizen of Honduras in ORR
4 custody in a residential group home in Kentwood, Michigan. Daniela Marisol was
5 born in 2001 and is seventeen years old. Daniela Marisol is, and at all relevant times
6 was, an unaccompanied alien child within the meaning of 6 U.S.C. § 279(g)(2) and a
7 member of the plaintiff class the *Flores* Settlement protects. Pursuant to Federal Rule
8 of Civil Procedure 17(c)(2), Daniela Marisol appears through her Next Friend and
9 sister, Katherine L., a resident of St. Paul, Minnesota. ORR previously refused to
10 release Daniela Marisol to her Next Friend and sister on the ground that Katherine is
11 or may be unfit due to not having a separate bedroom for Daniela Marisol and not
12 having adequate income to support Daniela Marisol's medical expenses. Katharine
13 has now met ORR's requirements for reunification having rented a larger apartment
14 and having enough disposable income to pay Daniela Marisol's medical expenses and
15 is currently awaiting ORR's decision to release Daniela Marisol into her care.

16 12. Plaintiff Gabriela N. is a native and citizen of El Salvador whom ORR is
17 presently detaining in St. Michael's Home for Children in Houston, Texas. She was
18 born in 2000 and is seventeen years old. Gabriela is, and at all relevant times was, an
19 unaccompanied alien child within the meaning of 6 U.S.C. § 279(g)(2) and a member
20 of the plaintiff class the *Flores* Settlement protects. Pursuant to Federal Rule of Civil
21 Procedure 17(c)(2), Gabriela appears through her Next Friend and grandfather, Isaac
22 N., a resident of Oakland, California. ORR has refused to release Gabriela to her Next
23 Friend and grandfather on the ground that Isaac is or may be unfit.

24 13. Plaintiff Miguel Angel S. is a native and citizen of Mexico whom ORR
25 is presently detaining at Yolo County Juvenile Detention Center ("Yolo"), a secure
26 facility in Woodland, California. He was born in 2001 and is seventeen years old.
27 Miguel Angel is, and at all relevant times was, an unaccompanied alien child within
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1 the meaning of 6 U.S.C. § 279(g)(2) and a member of the plaintiff class the *Flores*
2 Settlement protects. Pursuant to Federal Rule of Civil Procedure 17(c)(2), Miguel
3 Angel appears through his Next Friend and father, Gerardo S., a resident of San Jose,
4 California. Gerardo has sought to be Miguel Angel's custodian and to have Miguel
5 Angel released from ORR custody into his care.

6 14. Plaintiff Jaime D. is a native and citizen of Honduras and presently being
7 held in ORR custody in Dobbs Ferry, New York. He was born in 2004 and is thirteen
8 years old. Jaime is, and at all relevant times was, an unaccompanied alien child within
9 the meaning of 6 U.S.C. § 279(g)(2) and a member of the plaintiff class the *Flores*
10 Settlement protects. Pursuant to Federal Rule of Civil Procedure 17(c)(2), Jaime
11 appears through his Next Friend, Reyna D., a resident of Riverdale, Maryland. Reyna
12 is Jaime's aunt. Reyna has sought to be Jaime's custodian and to have Jaime released
13 from ORR custody into her care.

14 15. Plaintiff Sirena P. is a native and citizen of Mexico and is presently being
15 held in ORR custody at Shiloh RTC in Manvel, Texas. She was born in 2003 and is
16 fourteen years old. Sirena is, and at all relevant times was, an unaccompanied alien
17 child within the meaning of 6 U.S.C. § 279(g)(2) and a member of the plaintiff class
18 the *Flores* Settlement protects. Pursuant to Federal Rule of Civil Procedure 17(c)(2),
19 Sirena appears through her Next Friend, Eduardo P., a resident of Ontario, California.
20 Eduardo is Sirena's parent. Eduardo has sought to be Sirena's custodian and to have
21 Sirena released from ORR custody into his care.

22 16. Plaintiff Benjamin F. is a native and citizen of El Salvador whom ORR
23 is currently detaining at Shiloh RTC in Manvel, Texas. He was born in 2008 and is
24 an autistic, developmentally delayed nine-year-old boy with limited verbal abilities.
25 Benjamin is, and at all relevant times was, an unaccompanied alien child within the
26 meaning of 6 U.S.C. § 279(g)(2) and a member of the plaintiff class the *Flores*
27 Settlement protects. Benjamin F. appears through his Next Friend and grandmother,
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1 Isabella F., a resident of Los Angeles, California. Isabella has sought to be Benjamin’s
2 sponsor and to have Benjamin released from ORR custody into her care.

3 17. Plaintiff San Fernando Valley Refugee Children Center, Inc. (“Children
4 Center”) is a non-profit organization incorporated in the State of California, with its
5 principal place of business in North Hills, California. The Children Center is a project
6 of the North Hills United Methodist Church’s Hispanic Mission. The Children
7 Center’s mission is to provide comprehensive social services, including mental health
8 care, shelter, transitional living assistance and legal aid, to children, youth, and
9 families who have come in search of refuge from persecution and endemic violence
10 in the Northern Triangle of Central America (El Salvador, Honduras, and Guatemala).
11 The children and youth the Children Center serves are the functional equivalents of
12 its members. The rights of children and youth the Children Center seeks to protect in
13 this action are germane to its mission and purpose. ORR’s policies and practices, as
14 alleged herein, make it substantially more difficult for the Children Center to carry
15 out its mission. For example, many of the children and youth whom the Children
16 Center serves have suffered multiple psychological and physical traumas, first in their
17 countries of origin, next during their journeys through Mexico, and then again, upon
18 being arrested and detained for immigration violations. The more time already-
19 traumatized children and youth remain detained, separated from their parents and
20 families, the more their mental and physical health deteriorates. The trauma that
21 immigration detention causes children and youth is greater still when ORR places
22 them in restrictive settings such as juvenile halls and RTCs, or medicates them
23 involuntarily or without their parents’ consent or other lawful authority. The
24 additional trauma such detention inflicts requires the Children Center to devote
25 commensurately greater resources, particularly mental health resources, to assist such
26 children and youth to recover.

1 18. The Children Center is one of a small number of non-profit organizations
2 that serve refugee children and youth. The Children Center’s resources are limited
3 and do not allow it to help all who are in need. The Children Center’s ability to raise
4 funds depends in part on the raw number of children and youth it helps. As a practical
5 matter, resources the Children Center’s devotes to serving one child or youth are
6 unavailable to others. Defendants’ challenged policies and practices divert the
7 Children Center’s limited resources to address the injuries those policies and practices
8 cause, thereby reducing the number of other needy children and youth the Children
9 Center is able to assist, and, *a fortiori*, its ability to raise funds. The Children Center
10 therefore has a direct institutional interest in: (a) minimizing the time refugee children
11 and youth, including youth with disabilities, are detained; (b) ensuring that such
12 children and youth are housed in minimally restrictive settings for however long they
13 must remain in immigration-related detention; (c) minimizing the injury children and
14 youth suffer as a result of taking psychotropic drugs; and (d) ensuring that refugee
15 children and youth have counsel to assist them in all legal matters relating to their
16 immigration status, including custody, placement, and the administration of
17 psychotropic drugs without parental consent. The direct participation in this litigation
18 of the children and youth whom the Children Center serves is not necessary because
19 Plaintiffs seek only prospective equitable relief and nominal damages.

20 19. Plaintiff Unaccompanied Central American Refugee Empowerment
21 (“UCARE”) is an unincorporated consortium of non-profit agencies, most of which
22 are incorporated in the State of California, with its principal place of business in Los
23 Angeles, California. UCARE’s mission is to advocate for and provide legal and social
24 services to immigrant and refugee minors, many of whom are or have been in ORR
25 or Immigration and Customs Enforcement custody. In appropriate cases, UCARE
26 arranges free representation and assistance to youth with immigration problems
27 before the U.S. Citizenship and Immigration Services, the Executive Office of
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1 Immigration Review, and the Board of Immigration Appeals. Defendants' unlawful
2 policies and practices, as alleged herein, make such assistance and representation
3 substantially more difficult and render UCARE's work less effective. ORR's
4 compliance with the *Flores* Settlement and § 235 of the TVPRA is germane to
5 UCARE's purpose. The individual participation of aggrieved youth the UCARE
6 serves is not necessary because UCARE seeks only prospective or injunctive relief
7 and nominal damages for its client members. UCARE has an actual stake in this
8 litigation because the funding of UCARE's member organizations is largely
9 determined by the number of youth they serve. Defendants' challenged policies and
10 practices deny or delay children's release, and thus delay or deny Plaintiff UCARE's
11 member organizations the opportunity to serve them.

12 20. ORR has placed many unaccompanied children in the communities that
13 the Children Center and UCARE serve. In federal fiscal year 2018, ORR placed more
14 than 1,100 unaccompanied children in Los Angeles alone.

15 21. Defendant Alex Azar is the Secretary of HHS and oversees ORR.
16 Pursuant to 6 U.S.C. § 279, HHS is responsible for the proper care and placement of
17 unaccompanied alien children who are in federal custody by reason of their
18 immigration status. HHS and ORR discharge these duties by, *inter alia*, entering into
19 contracts with public and private entities to house, care for, and provide legal
20 assistance to unaccompanied alien children arrested and detained pursuant to the INA.
21 Defendant Azar is sued in his official capacity only.

22 22. Defendant E. Scott Lloyd is the Director of ORR. ORR is responsible for
23 the care, custody, and release of unaccompanied alien children in federal custody on
24 account of their immigration status. Defendant Lloyd is sued in his individual capacity
25 for nominal damages pursuant to *Bivens v. Six Unknown Named Agents of Fed.*
26 *Bureau of Narcotics*, 403 U.S. 388 (1971), and in all other respects in his official
27 capacity only.

1 23. Defendants, and each of them, have historically professed to act in the
2 capacity of *parens patriae* to detained children. Defendants, and each of them, thereby
3 assume a legal obligation to act in such children’s best interests. Defendants breach
4 this duty in pursuing the policies and practices challenged in this Complaint.

5 IV.

6 NAMED PLAINTIFFS’ EXPERIENCES IN ORR CUSTODY

7 A. Lucas R.

8 24. On or about February 12, 2018, ORR assumed custody of Plaintiff Lucas
9 R. after he arrived at the U.S.-Mexico border. ORR placed him at the Hacienda del
10 Sol facility in Youngtown, Arizona. Within approximately ten days, Madelyn R.,
11 Lucas’ adult sister and Next Friend, requested Lucas’ custody and delivered to ORR
12 a family reunification packet with the required documentation. Many years ago, Lucas
13 and Madelyn’s father abandoned them; their mother died when Lucas was
14 approximately two years old. Thereafter, Madelyn and an aunt raised Lucas in his
15 parents’ stead. Madelyn and Lucas have a very close relationship. Over the next six
16 weeks or so, ORR gave Lucas and Madelyn the impression that everything was in
17 order and that it would soon release Lucas to Madelyn’s custody; it did not.

18 25. According to Madelyn, in Guatemala, Lucas was a thriving, happy child
19 who liked to joke, play, and talk with people. When he arrived at Hacienda del Sol,
20 facility staff noted that Lucas appeared cooperative, calm, and alert, and showed “no
21 behavioral concerns.”

22 26. As his confinement wore on, however, Lucas became depressed, fearing
23 that ORR would never release him to his family. Without obtaining Madelyn’s
24 informed consent, the informed consent of any other adult family member, or judicial
25 authorization, ORR administered Lucas psychotropic drugs, ostensibly to control
26 “moderate” depression. Upon information and belief, ORR did not involve a neutral
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1 decision maker in the initial determination of whether to prescribe psychotropic
2 medications to Lucas or in ongoing reviews of those medications.

3 27. The medications caused Lucas stomach pain, and he refused to continue
4 taking them. Lucas thinks that his refusal to take the medications harmed his ability
5 to reunify with his sister.

6 28. Approximately six weeks after Madelyn had requested Lucas' custody,
7 ORR sent an investigator to Madelyn's home in Los Angeles, California. Living with
8 Madelyn then and now are her infant daughter, adult brother, and an unrelated female
9 roommate and her child. At the time the investigator arrived, Madelyn's roommate's
10 brother was visiting.

11 29. The investigator indicated to Madelyn that her home was suitable, but
12 that all adults who reside with her would have to appear for fingerprinting, including
13 her roommate's brother. Madelyn advised the investigator that her roommate's
14 brother did not live in the home, but the investigator insisted that the visitor appear
15 for fingerprinting regardless. All the adult residents of Madelyn's home appeared for
16 fingerprinting, but her roommate's brother did not. Approximately one month later,
17 ORR orally advised Madelyn that it would not release Lucas to her because her
18 roommate's brother had failed to appear for fingerprinting. ORR represented to
19 Madelyn that its decision was final, and afforded neither Madelyn nor Lucas any
20 hearing, right to administrative appeal, or other means to change its decision. ORR
21 failed to provide Madelyn with a written decision or written explanation for denying
22 her custody of Lucas.

23 30. When Lucas learned that the ORR home examiner recommended against
24 releasing him to Madelyn, he was devastated. Lucas began feeling desperate and
25 helpless over his prolonged detention and shared those feelings with staff members.
26 Rather than attempting to help Lucas manage his feelings, Hacienda del Sol personnel
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1 responded to his pleas for support by hospitalizing Lucas and requesting that ORR
2 transfer him to a more secure facility.

3 31. On or about May 21, 2018, ORR transferred Lucas to Shiloh RTC in
4 Manvel, Texas due to his mental health needs. ORR did not afford Lucas notice of
5 this transfer, an opportunity to be heard, or a right to appeal. ORR led Madelyn to
6 believe Shiloh RTC was simply another shelter to which it was sending Lucas because
7 Hacienda del Sol lacked space. Due to ORR's actions and inactions, Lucas' release
8 has been unnecessarily delayed, and Lucas has not been placed in the least restrictive
9 setting.

10 32. Upon information and belief, while detained at Shiloh RTC, Lucas has
11 been administered Zoloft. Zoloft's side-effects include rigidity in the muscles, high
12 fever, sweating, confusion, agitation, hallucinations, overactive reflexes, tremors,
13 nausea, vomiting, diarrhea, loss of appetite, fainting, and seizures.

14 33. Shiloh personnel have now diagnosed Lucas with "major depressive
15 disorder." Among Lucas' "major stressors," Shiloh personnel identify his "[b]eing
16 kept from family and in ORR custody." Shiloh staff nonetheless told Lucas that ORR
17 would not release him until Shiloh medical personnel declared him psychologically
18 sound. Lucas' experiences in ORR custody, including prolonged separation from his
19 family and administration of psychotropic medications over his objection and without
20 informed consent, exacerbated his mental health symptoms and made this approval
21 less likely, thereby delaying his release.

22 34. Shiloh personnel have regularly prevented Lucas from communicating
23 with Madelyn over the telephone. Shiloh denied Lucas his right to speak with
24 Madelyn on a weekly basis without providing him or his sister any explanation for
25 the denial. This prohibition has made Lucas deeply despondent and has increased his
26 feelings of isolation.

1 35. ORR has provided Lucas no legal counsel to represent him with respect
2 to release, the administration of psychotropic medications, or placement at Shiloh.

3 36. Prior to Tuesday, September 4, 2018, ORR refused to release Lucas to
4 his Next Friend and sister on the ground that Madelyn’s home may be unfit. ORR
5 indicated on September 4, 2018, that it would release Lucas on September 6, 2018;
6 however as of the time of this filing, upon information and belief, Lucas remains
7 detained.

8 B. Daniela Marisol T.

9 37. On or about August 3, 2017, Plaintiff Daniela Marisol T., a partially deaf
10 seventeen-year-old girl, arrived at the U.S.-Mexico border with her older sister,
11 Katherine L., and her nephew. Daniela Marisol, Katherine, and her younger nephew
12 fled from their home country in fear for their lives. At the border, Daniela Marisol
13 was forcibly separated from her sister and nephew and placed in the custody of ORR
14 at the International Education Service Norma Linda Shelter in Los Fresnos, Texas.
15 Daniela Marisol and Katherine are very close, and Daniela Marisol views Katherine
16 as a second mother. Daniela Marisol was so emotionally traumatized by the separation
17 that she was later admitted to a psychiatric hospital to cope with the trauma. The
18 screening physician also recommended treatment for Daniela Marisol’s hearing
19 disability once she was released to her sister—a release that, eleven months later, has
20 yet to come to fruition. Daniela Marisol finally received a hearing aid ten months after
21 the screening physician’s original recommendation, and thus spent nearly a year with
22 limited ability to hear.

23 38. Katherine and her son, detained separately from Daniela Marisol, were
24 released from immigration custody after they proved to an Asylum Officer that they
25 have a credible fear of persecution should they be returned to Honduras. Upon release,
26 Katherine applied to become Daniela Marisol’s custodian and have ORR release
27 Daniela Marisol to her custody. However, ORR has placed arbitrary, expensive, and
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1 excessive conditions on Daniela Marisol’s release, which preemptively dissuaded
2 Katherine from applying to be her sponsor, and included conditions purportedly
3 related to Daniela Marisol’s mental health needs. Only recently, following
4 overwhelming community support, has Katherine finally been able to meet these
5 excessive conditions and apply to be Daniela Marisol’s sponsor.

6 39. According to Katherine, when Daniela Marisol lived in Honduras with
7 her family, she did not seem to have mental health issues. However, Daniela Marisol’s
8 psychological state rapidly deteriorated after her family separation. It was further
9 exacerbated when caseworkers told Daniela Marisol that she was not going to be
10 released to her sister. Daniela Marisol lost hope that she would ever be released to her
11 family. Depressed and suicidal, she was admitted to a psychiatric hospital where she
12 suffered a psychotic breakdown.

13 40. While Daniela Marisol was detained at the Norma Linda shelter, a doctor
14 reiterated the screening physician’s recommendation, while also discovering that she
15 was largely deaf in one ear. ORR declined to treat her deafness and instead noted that
16 she should consult a specialist regarding her deafness “once [she was] reunified with
17 family.” Likewise, at Shiloh RTC, Daniela Marisol’s hearing disability went
18 untreated. Months later, when she was stepped-down to a shelter care facility in Los
19 Angeles County called David and Margaret, it was again recommended she receive
20 hearing aids. Again, she never received the hearing aids while in Los Angeles County.
21 Finally, only after she was transferred to Michigan and in the custody of Bethany
22 Christian Services—almost ten months after her hearing disability diagnosis and only
23 at the repeated request of counsel—did she receive her hearing aids.

24 41. After her breakdown, on or about September 8, 2017, ORR transferred
25 Daniela Marisol to Shiloh RTC in Manvel, Texas due to her mental health needs.
26 ORR did not afford her notice of her transfer, an opportunity to be heard or a right to
27 appeal. Moreover, Daniela Marisol’s sister, Katherine, was required to show a \$500
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1 per month disposable income in order to support Daniela Marisol’s psychological and
2 medical needs. Because her sister did not have sufficient economic resources ORR
3 told her she could not qualify to sponsor Daniela Marisol.

4 42. Without obtaining the informed consent of Daniela Marisol’s mother,
5 Katherine, other family members, or court authorization, ORR administered
6 numerous psychotropic medications to Daniela Marisol, including atypical
7 antipsychotics and antidepressants, starting when she was in the Norma Linda shelter,
8 and continuing while she was at Shiloh RTC and the David and Margaret shelter in
9 Los Angeles County, and through her present placement, Bethany Christian Services
10 in Michigan. In the approximately thirteen months that she has been in ORR custody,
11 Daniela Marisol has been given multiple psychotropic medications, including Prozac,
12 Abilify, Clonidine, Risperdal, Seroquel, and Zyprexa. While in ORR custody, Daniela
13 Marisol has been the subject of numerous, changing diagnoses, including “Bipolar
14 disorder, MRE, Mixed, with psychosis, GAD, PTSD;” “major depressive disorder,
15 recurrent episode, severe with mood-congruent psychotic features;” and “bipolar II
16 disorder, generalized anxiety disorder, PTSD.” Upon information and belief, ORR
17 did not involve a neutral decision maker in the initial determination of whether to
18 prescribe psychotropic medications to Daniela Marisol or in ongoing reviews of those
19 medications.

20 43. As recognized by the U.S. Food and Drug Administration (“FDA”),
21 antidepressants such as those prescribed to Daniela Marisol “increase[] the risk
22 compared to placebo of suicidal thinking and behavior (suicidality) in children,
23 adolescents, and young adults in short term studies of major depressive disorder
24 (MDD) and other psychiatric disorders.” ORR has frequently given Daniela Marisol
25 an atypical antipsychotic and an antidepressant in combination. Research
26 demonstrates that the number and severity of side effects, such as thoughts of suicide
27 and intentional self-harm, increases as the number of concurrent medications
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1 increases. Daniela Marisol has become suicidal while being forced to take such
2 antidepressants and drug combinations.

3 44. Daniela Marisol believes that she has to take the medication because
4 facility staff have told her that she must in order to be released from government
5 custody.

6 45. Katherine desperately wants to provide her younger sister a loving and
7 safe home, and she has done everything in her power to have Daniela Marisol released
8 to her care. However, ORR told Katherine that, in order for Daniela Marisol to be
9 released to her care, Katherine must move to a new house, have a separate private
10 bedroom for Daniela Marisol, and prove that she can pay over \$500 per month for
11 Daniela Marisol's medical care. In response to these demands, Katherine engaged
12 with a local, supportive Jewish Synagogue that has raised money for a new apartment
13 with a separate bedroom for Daniela Marisol, donated new furnishings for Daniela
14 Marisol's bedroom, and fundraised over \$5,000 in cash from its congregation to
15 support Daniela Marisol's medical needs. Katherine currently lives in a new
16 apartment which she rented specifically to meet ORR's demand that Daniela Marisol
17 have a separate bedroom, and has enough money saved to meet all of Daniela
18 Marisol's medical needs. She has received a positive home study evaluation and an
19 expert psychologist found it was in Daniela Marisol's best interest to be reunited with
20 her sister. Katherine has attempted to meet ORR's arduous demands, but has yet to
21 be provided with any written decision as to whether she will be reunified with Daniela
22 Marisol. ORR's requirements that Katherine must have a two-bedroom apartment and
23 be able to demonstrate she has the ability to pay \$500 per month in medical expenses
24 were represented to Katherine as fixed prerequisites to sponsoring Daniela Marisol.
25 ORR never afforded Katherine or Daniela Marisol any hearing, right to administrative
26 appeal, or other means to change its decision. Due to ORR's actions and inactions,
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1 Daniela Marisol's release has been unnecessarily delayed, and she has not been placed
2 in the least restrictive setting.

3 46. Daniela Marisol remains in government custody, away from her sister
4 and other family. ORR has given her no legal counsel to represent her with respect to
5 release, administration of psychotropic medications, or her placement.

6 C. Miguel Angel S.

7 47. On or about May 16, 2017, ORR assumed custody of Plaintiff Miguel
8 Angel after he arrived at the U.S.-Mexico border. ORR placed him at the Southwest
9 Key shelter in southern California. The staff initially told Miguel Angel that he would
10 be released to Gerardo S., his father and next friend, within three months.

11 48. As Miguel Angel's time in detention wore on, he felt anxious at the
12 shelter and often feared he would never be released. On July 17, 2017, ORR
13 transferred Miguel Angel to Shiloh RTC in Texas due to his mental health needs.
14 ORR did not afford him notice of his transfer, an opportunity to be heard or a right to
15 appeal. At Shiloh, Miguel Angel was administered several psychotropic medications,
16 including Remeron, Trazadone, Seroquel, and Lexapro. Side effects of these
17 medications include stomach pain, dizziness, nausea, drowsiness, unusual weight
18 gain, blurred vision, and insomnia.

19 49. Miguel Angel objected to taking the medications because they made him
20 feel itchy, dizzy, aggressive, nauseous, and caused him to gain an unusual amount of
21 weight in a short period of time. Shiloh staff insisted that he take the medication. Upon
22 information and belief, the staff at Shiloh administered these medications to Miguel
23 Angel without obtaining Gerardo's informed consent or judicial authorization.

24 50. Upon information and belief, ORR did not involve a neutral decision
25 maker in the initial determination of whether to prescribe psychotropic medications
26 to Miguel Angel or in ongoing review of those medications.

1 51. While Miguel Angel was detained at Shiloh, several staff members
2 physically assaulted him multiple times. During one incident, a staff member placed
3 Miguel Angel in a headlock, painfully ripping Miguel Angel's earring out of his
4 earlobe. A physician assistant watched this, but did nothing to stop the attack. Miguel
5 Angel reported the incident immediately to the facility doctor, but the doctor laughed
6 and did nothing. Another time, two Shiloh staff members picked Miguel Angel up by
7 his arms and pushed him up against a wall. One of the staff members pressed his
8 forearm across Miguel Angel's throat, making it hard for him to breathe. Upon
9 information and belief, when Miguel Angel reported the incidents to staff, no
10 disciplinary action was taken.

11 52. In March 2018, shortly after these assaults took place, ORR transferred
12 Miguel Angel to Yolo Juvenile Detention Center, affording him neither notice nor
13 opportunity to be heard. Upon information and belief, Miguel Angel was transferred
14 to Yolo in retaliation for reporting the assaults.

15 53. At Yolo, facility staff has attacked Miguel Angel with pepper spray, and
16 he fears they will do it again. On one occasion, after Miguel Angel had been pepper
17 sprayed by staff in his eyes and ears, he had to use water from the toilet in his cell to
18 wash out his eyes because staff cut off water to his sink. The pepper spray made his
19 eyes feel like they were on fire, and he lost hearing in one ear for several days. Miguel
20 Angel spends most of his time at Yolo locked in a small cell and is only allowed out
21 for short periods, which makes him feel trapped and tortured.

22 54. Miguel Angel's father, Gerardo, applied to be Miguel Angel's sponsor
23 around October 2017. Miguel Angel and Gerardo have a very close relationship, and
24 Miguel Angel wants to live with him. Gerardo lives in an apartment with his brother,
25 and in October 2017 both Gerardo and his brother submitted all required documents
26 to ORR, including birth certificates and fingerprints. ORR also requested that
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1 Gerardo's neighbor, who lives across the hallway, submit the same information. The
2 neighbor submitted this information in October 2017.

3 55. In December 2017, a home investigator visited Gerardo's apartment to
4 perform a home study. The home study went well, and the home investigator
5 recommended that Miguel Angel be released to Gerardo's custody. The home
6 investigator assured Gerardo that Miguel Angel would probably be released in the
7 first few weeks of January. Gerardo heard nothing from ORR or Miguel Angel's case
8 workers throughout January or February 2018.

9 56. At both facilities, Miguel Angel experienced barriers to release to his
10 father. In March 2018, Gerardo was told that the Shiloh doctors would not approve
11 Miguel Angel for release and that he would remain in ORR custody until they do.
12 Miguel Angel's experiences in ORR custody, including prolonged separation from
13 his family, administration of psychotropic medications over his objection and without
14 informed consent, and assaults by staff at Shiloh, exacerbated his mental health
15 symptoms and made this approval less likely, thereby delaying his release.

16 57. In early May 2018, Miguel Angel's case worker at Yolo told Gerardo
17 that he needed to provide proof of school enrollment and the name of a psychiatric
18 clinic in order for Miguel Angel to be released. Gerardo has tried his best to comply
19 with these requirements, but the local school requires Miguel Angel to be physically
20 present in order to be enrolled, and Gerardo has been unable to find a psychiatric
21 clinic that will give Miguel Angel an appointment. In late May 2018, Miguel Angel's
22 case worker told Gerardo that his fingerprints had expired, and that Gerardo, his
23 brother, and his neighbor would need to submit their fingerprints again.

24 58. ORR has refused to release Miguel Angel to Gerardo's custody for over
25 a year. ORR has not provided Miguel Angel or Gerardo with written notification of
26 its refusal to release Miguel Angel or the basis for the refusal, or an opportunity to
27 review the underlying evidence or appeal ORR's refusal to release Miguel Angel to
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1 his father. Due to ORR's actions and inactions, Miguel Angel's release has been
2 unnecessarily delayed and he has not been placed in the least restrictive setting.

3 D. Gabriela N.

4 59. On or about January 8, 2017, ORR assumed custody of Plaintiff Gabriela
5 N., shortly after she had turned herself in at the U.S.-Mexico border. As a young girl
6 living in El Salvador, Gabriela experienced extreme violence and did not feel safe at
7 home. ORR placed her at the Southwest Key Casita del Valle facility ("Casita del
8 Valle shelter") in Clint, Texas. In April 2017, Isaac N., Gabriela's grandfather and
9 Next Friend, requested Gabriela's custody and submitted an application to serve as
10 her custodian. Gabriela's mother appeared before a U.S. Consular official in El
11 Salvador to execute a formal designation pursuant to Paragraph 14D of the *Flores*
12 settlement directing ORR to release Gabriela to her grandfather.

13 60. Gabriela's biological father is deceased, and her stepfather physically
14 abused her mother and disabled sister who suffers from paralysis from the abuse and
15 can no longer speak. Thus, Gabriela fled to the U.S. seeking safety, with the hope of
16 living with her grandfather. Gabriela and her grandfather, Isaac, have a close
17 relationship, and she wants to live with him. Over the next approximately fourteen
18 months, Isaac continued to submit documents that ORR requested and completed a
19 home study in anticipation that ORR would release Gabriela to his custody; it did not.

20 61. In El Salvador, Gabriela took no medications for mental illness. When
21 she arrived at Casita del Valle shelter, facility staff noted that Gabriela appeared
22 emotionally stable, receptive, and resilient.

23 62. As her confinement wore on, however, Gabriela became depressed and
24 anxious, fearing that ORR would never release her to her family. Without obtaining
25 Isaac's informed consent, the informed consent of any other adult family member, or
26 judicial authorization, ORR repeatedly administered Gabriela psychotropic
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1 medications, ostensibly to control post-traumatic stress disorder, anxiety, major
2 depressive disorder, and attention-deficit hyperactivity disorder (“ADHD”).

3 63. While at Casita del Valle shelter, Gabriela was administered Prozac, a
4 psychotropic medication.

5 64. On or about September 7, 2017, ORR transferred Gabriela to Shiloh RTC
6 due to her mental health needs. ORR did not afford her notice of the transfer, an
7 opportunity to be heard or a right to appeal. At Shiloh, ORR administered Gabriela
8 another psychotropic medication, Adderall, which includes side effects of irritability
9 and difficulty with sleep initiation. Adderall is also known to cause or worsen
10 depression in a significant proportion of those who take it. Over the course of
11 Gabriela’s detention in Shiloh, the psychiatrist at Shiloh increased the dosage of
12 Adderall administered to Gabriela several times. Upon information and belief, ORR
13 did not involve a neutral decision maker in the initial determination of whether to
14 prescribe psychotropic medications to Gabriela or in ongoing review of those
15 medications.

16 65. Gabriela does not believe the medications help her, and she does not
17 want to take them. However, Gabriela believes that she must take the medications in
18 order to be released from detention. Shiloh staff told Gabriela that ORR would not
19 release her until Shiloh medical personnel declare her psychologically sound.
20 Gabriela’s experiences in ORR custody, including prolonged separation from her
21 family and taking medications she does not want to take, exacerbated her mental
22 health symptoms and made this approval less likely, thereby delaying her release.

23 66. In February 2018, ORR sent an investigator to Isaac’s home in Oakland,
24 California, where he lived, and continues to live, alone. Isaac moved to a new
25 apartment and purchased a new bed for Gabriela in preparation for her release.

26 67. The investigator’s report acknowledges the close relationship between
27 Isaac and Gabriela, credits Isaac for having “adequate housing,” “access to
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1 transportation,” and “maintain[ing] stable employment,” and notes that Isaac is
2 committed to “oversee[ing] [Gabriela’s] arrival to school each day and . . . provid[ing]
3 afterschool supervision,” is aware of a local “hospital where he could take [Gabriela]
4 for any medical needs,” and has “identified a local mental health provider . . . where
5 he intends to connect [Gabriela].” However, the investigator questioned Isaac’s ability
6 to support Gabriela’s education and care for her financially. Isaac assured the
7 investigator that he would do everything required to provide for Gabriela. Later,
8 Gabriela’s social worker at Shiloh told Isaac that ORR was no longer considering him
9 as a custodian for his granddaughter. ORR afforded neither Isaac nor Gabriela any
10 hearing, right to administrative appeal, or other means to change its decision. ORR
11 failed to provide Isaac with a written decision or written explanation for denying him
12 custody of Gabriela. Due to ORR’s actions and inactions, Gabriela’s release has been
13 unnecessarily delayed and Gabriela has not been placed in the least restrictive setting.

14 68. Seventeen-year-old Gabriela remains detained in ORR custody at St.
15 Michael’s Home for Children, where she has been administered Prozac and Adderall.
16 For four months, St. Michael’s personnel continued to administer Adderall to
17 Gabriela without obtaining new prescriptions from a psychiatrist. After Gabriela
18 finally met with a psychiatrist four months into her detention at St. Michael’s, the
19 psychiatrist increased the dosage of Adderall yet again.

20 69. After being detained for over one and a half years, Gabriela is miserable
21 and desperately wants to live with her grandfather. Her grandfather is ready and eager
22 to care for her. Shiloh staff have nonetheless told Gabriela that ORR will not release
23 her to her grandfather. ORR has provided Gabriela no legal counsel to represent her
24 with respect to release, the administration of psychotropic medications, or her
25 placement at Shiloh.

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1 E. Jaime D.

2 70. On or about April 8, 2018, ORR assumed custody of thirteen-year-old
3 Plaintiff Jaime D. after he arrived at the U.S.-Mexico border with his six-year-old
4 sister and ten-year-old aunt. ORR placed Jaime and his younger sister and aunt at the
5 Cayuga Centers shelter in Bronx, New York. On or about April 10, 2018, Reyna D.,
6 Jaime's aunt and Next Friend, requested Jaime's custody and submitted a family
7 reunification packet to ORR. Reyna is Jaime's only family in the United States. Jaime
8 desperately wants to be released to Reyna's care. Jaime's mother died when he was
9 seven years old and, upon information and belief, his father died before he was born.
10 Reyna discussed ORR's requirements for becoming Jaime's custodian in detail with
11 Jaime's case manager at Cayuga Centers and immediately began gathering the
12 required documents to send to ORR.

13 71. When Jaime was first sent to Cayuga Centers, the staff made him feel
14 very nervous. Jaime was terrified that he would be forced to return to his home
15 country, where his life had been threatened. He made up a story about his life in his
16 home country, because he thought that this would make the shelter staff leave him
17 alone. He later recanted this story multiple times.

18 72. On or about April 18, 2018, ORR transferred Jaime to Yolo County
19 Juvenile Detention Center in Woodland, California. ORR transferred Jaime to Yolo
20 without affording him notice, an opportunity to be heard or a right to appeal. He was
21 awakened at 4:00 in the morning and restrained with heavy shackles throughout the
22 cross-country flight from New York to California. Jaime was not allowed to say
23 goodbye to his younger sister or aunt. He was extremely worried they would think he
24 had abandoned them.

25 73. Yolo staff first contacted Reyna regarding her application for Jaime's
26 custody about a week after Jaime arrived at Yolo. Approximately two weeks later,
27 Jaime's case manager noted that Reyna had "provided all that [had] been asked of
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1 her,” including a complete family reunification packet and fingerprints. In late May
2 2018, Reyna completed a home study and interview with a home investigator. ORR
3 found Reyna a suitable custodian for Jaime’s younger sister and aunt. ORR released
4 the two girls to Reyna’s care on or about June 8, 2018.

5 74. While detained at Yolo, Jaime felt unsafe and suffered from anxiety.
6 Reyna was extremely concerned for his well-being as well, as Jaime sounded
7 increasingly sad and scared during their phone calls. Throughout his time at Yolo,
8 Jaime suffered physical abuse at the hands of older youth in the facility. Jaime alerted
9 facility staff of the abuse, but staff ignored his concerns and said they did not believe
10 him.

11 75. Two weeks after he was transferred to Yolo, Jaime’s case manager noted
12 that the Yolo staff were “all in agreement that [Jaime] isn’t appropriately placed in a
13 secure setting.” Jaime was told by his case worker that he was too young to be at Yolo
14 and would hopefully be transferred soon. However, Jaime remained at Yolo for
15 another three weeks. On or about May 24, 2018, ORR transferred Jaime to Children’s
16 Village medium secure facility in Dobbs Ferry, New York.

17 76. Thirteen-year-old Jaime remains detained at Children’s Village, where
18 he is increasingly anxious and worried that he will never be released to his aunt’s care.
19 As of the filing of this Amended Complaint, Reyna has not heard from Jaime’s case
20 worker at Children’s Village for almost a month. ORR has not provided Jaime or
21 Reyna with written notification of its refusal to release Jaime or the basis for the
22 refusal, or an opportunity to review the underlying evidence or appeal ORR’s refusal
23 to release Jaime to his aunt. Due to ORR’s actions and inactions, Jaime’s release has
24 been unnecessarily delayed and Jaime has not been placed in the least restrictive
25 setting.

26 77. ORR has provided Jaime no legal counsel to represent him with respect
27 to release or his placement at Children’s Village.

1 F. Sirena P.

2 78. On or about April 14, 2018, ORR assumed custody of Plaintiff Sirena P.
3 after she arrived at the U.S.-Mexico border with her two siblings. ORR placed Sirena
4 and her siblings at the Southwest Key Campbell shelter (“Campbell”) in Phoenix,
5 Arizona. Shortly after, Eduardo P., Sirena’s father and Next Friend, requested
6 Sirena’s custody and submitted a family reunification packet to ORR. Sirena’s father
7 has completed two home studies and received positive recommendations for both.
8 After the first home study was completed, Campbell released Sirena’s siblings to her
9 parents’ custody. ORR prohibited Sirena from joining her siblings and parents, citing
10 Sirena’s mental health needs.

11 79. Sirena’s separation from her parents upset her so severely that she was
12 hospitalized twice in May 2018. Sirena has explained that her mental health needs are
13 fueled solely by the agony she feels as a result of her ongoing separation from her
14 parents.

15 80. Without obtaining Eduardo’s informed consent, the informed consent of
16 any other adult family member, or judicial authorization, while detained at Campbell
17 and during her hospitalization, shelter and hospital personnel administered multiple
18 psychotropic medications to Sirena, including Hydroxyzine, Prozac, Abilify, and
19 Zoloft.

20 81. On or about June 4, 2018, ORR transferred Sirena to Shiloh RTC in
21 Manvel, Texas due to her mental health needs. ORR transferred Sirena to Shiloh
22 without affording her notice, an opportunity to be heard or a right to appeal. She was
23 awakened around 3:00 in the morning and transported to Shiloh against her wishes.

24 82. At Shiloh, Sirena struggles with anxiety, depression, and hopelessness.
25 Sirena’s Admission Assessment indicated that Sirena’s major stressors include
26 “[s]eparation from family” and “[f]rustration with lengthy reunification process.”
27 Without obtaining Eduardo’s informed consent, the informed consent of any other
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1 adult family member, or judicial authorization, Shiloh personnel have administered
2 Bupropion, a psychotropic medication, to Sirena.

3 83. Sirena remains detained at Shiloh, where she is increasingly anxious and
4 worried that she will never be released to her parents' care. As of August 24, 2018,
5 Sirena's release was still pending her doctor's approval. Sirena's experiences in ORR
6 custody, including prolonged separation from her family and administration of
7 psychotropic medications without informed consent, have exacerbated her mental
8 health symptoms, thereby making this approval less likely and delaying her release.

9 84. Due to ORR's actions and inactions, Sirena's release has been
10 unnecessarily delayed and Sirena has not been placed in the least restrictive setting.
11 While Sirena's two nondisabled siblings have been released to their parents, Sirena
12 has been placed at Shiloh and her release has been delayed on the basis of her mental
13 health needs.

14 85. Upon information and belief, ORR has provided Sirena no legal counsel
15 to represent her with respect to release or her placement at Shiloh.

16 G. Benjamin F.

17 86. On or about July 2, 2018, ORR assumed custody of Benjamin F. after he
18 and his brother were inexplicably separated from their mother in the South Texas
19 Family Residential Center, known as Dilley.

20 87. Nine-year-old Benjamin, who is autistic and developmentally delayed,
21 struggles to function and speak when he is not in the presence of his mother. His
22 traumatic separation from his mother and placement in ORR custody has led to a
23 cascading effect of multiple physical and emotional challenges for him, none of which
24 are being addressed by ORR.

25 88. Benjamin was initially placed at St. PJ's Children's Home with his
26 brother, Mateo P. Isabella, Benjamin's grandmother and Next Friend, immediately
27 began the process of filling out the Family Reunification Packet so that both of her
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1 grandsons could be released to her in Los Angeles, California. Isabella received
2 confusing and conflicting information about additional information she needed to
3 provide to ORR, but she kept responding to every request that she received and she
4 successfully submitted a completed packet to ORR. ORR conducted a home study of
5 Isabella and gave her a positive recommendation.

6 89. Without obtaining Isabella's informed consent, the informed consent of
7 any other adult family member, or judicial authorization, Benjamin was placed on
8 multiple psychotropic medications, including Guanfacine and Risperidone, while he
9 was at St. PJ's Children's Home. The Guanfacine made Benjamin severely drowsy.
10 Upon information and belief, ORR did not involve a neutral decision maker in the
11 initial determination of whether to prescribe psychotropic medications to Benjamin
12 or in ongoing review of those medications.

13 90. On or about July 23, 2018, ORR transferred Benjamin to Shiloh RTC in
14 Manvel, Texas due to his mental health and behavioral health needs. ORR transferred
15 Benjamin to Shiloh without affording him notice, an opportunity to be heard or a right
16 to appeal. This transfer resulted in yet another devastating separation: between
17 Benjamin and his older brother Mateo.

18 91. Benjamin's isolation and trauma have worsened at Shiloh. Shortly after
19 Benjamin was transferred to Shiloh, in August 2018, St. PJ's released Mateo to his
20 grandmother's care. While Mateo now lives in the comfort of Isabella's home
21 hundreds of miles away in Los Angeles, Benjamin continues to languish in detention
22 without the benefits of the daily protection and care of his older brother.

23 92. At Shiloh, personnel continued to administer Guanfacine and
24 Risperidone to Benjamin. Within three weeks of his arrival, Shiloh administered a
25 new psychotropic medication, Lexapro, and increased the dosages of both Guanfacine
26 and Lexapro administered to Benjamin. Upon information and belief, as was the case
27 at St. PJ's, ORR did not involve a neutral decision maker in the initial determination
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1 of whether to prescribe psychotropic medications to Benjamin or in ongoing review
2 of those medications.

3 93. Upon information and belief, Benjamin will not be released from Shiloh
4 until medical personnel declare him psychologically sound and approve his release.
5 Benjamin’s experiences in ORR custody, including prolonged separation from his
6 family—in particular his mother, the only person with whom he communicates
7 effectively verbally—and administration of psychotropic medications without
8 informed consent, have exacerbated his mental health symptoms and made this
9 approval less likely, thereby delaying his release.

10 94. While Benjamin’s nondisabled brother has been released to his
11 grandmother, Benjamin has been placed at Shiloh and his release has been delayed on
12 the basis of his mental health needs, which are in no way being met in his current
13 placement.

14 95. Nine-year-old Benjamin remains detained at Shiloh, where he is
15 increasingly anxious and desperate to reunite with his brother and grandmother. Due
16 to ORR’s actions and inactions, Benjamin’s release has been unnecessarily delayed
17 and Benjamin has not been placed in the least restrictive setting.

18 V.

19 CLASS ACTION ALLEGATIONS

20 96. The named Plaintiffs bring this action pursuant to Federal Rule of Civil
21 Procedure 23(a) and (b)(2) on behalf of themselves and the following similarly
22 situated proposed class members:

23 All children in ORR custody pursuant to 6 U.S.C. § 279 and/or 8 U.S.C.
24 § 1232 —

- 25 (a) whom ORR refuses to release to parents or other available custodians
26 within thirty days of the proposed custodian’s submitting a complete
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- 1 family reunification packet on the ground that the proposed custodian is
2 or may be unfit;
- 3 (b) who have been, are or will be placed in a secure facility, medium-secure
4 facility, or RTC, or continued in any such facility for more than thirty
5 days, without being afforded notice and an opportunity to be heard
6 before a neutral and detached decisionmaker regarding the grounds for
7 such placement;
- 8 (c) who have been or will be administered psychotropic medication without
9 procedural safeguards, including obtaining informed consent or court
10 authorization prior to medicating a child, involving a neutral
11 decisionmaker in the initial determination of whether to prescribe
12 psychotropics to a child in ORR custody, and involving a neutral
13 decision-maker to conduct periodic reviews of those medications as
14 treatment continues;
- 15 (d) who are natives of non-contiguous countries and to whom ORR blocks
16 legal assistance in legal matters or proceedings involving their custody,
17 placement, release, and/or non-consensual consumption of psychotropic
18 drugs;
- 19 (e) who have, will have, or are perceived to have a behavioral, mental health,
20 intellectual and/or developmental disability, and who have been, are, or
21 will be placed in a secure facility, medium-secure facility, or RTC
22 because of such disability or perceived disability; or
- 23 (f) who have, will have, or are perceived to have a behavioral, mental health,
24 intellectual and/or developmental disability, and whose release has been,
25 is, or will be delayed or obstructed because of such disability or
26 perceived disability.
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1 97. The exact size of the proposed class is unknown, but likely includes
2 hundreds of children. The size of the class is so numerous that joinder of all members
3 is impracticable.

4 98. The claims of Plaintiffs and those of the proposed class members raise
5 common questions of law and fact concerning whether Defendants’ policies and
6 practices relating to the release, placement, treatment, and legal representation of
7 detained immigrant children are consistent with the *Flores* Settlement, § 235 of the
8 TVPRA, the Fifth Amendment to the United States Constitution, the First
9 Amendment of the Constitution, and Section 504 of the Rehabilitation Act. These
10 questions are common to the named Plaintiffs and the members of the proposed class
11 because Defendants have acted and will continue to act on grounds generally
12 applicable to the named Plaintiffs and the proposed class members. Plaintiffs’ claims
13 are typical of the class’s claims.

14 99. The prosecution of separate actions by individual members of the
15 proposed class would create a risk of inconsistent or varying adjudications
16 establishing incompatible standards of conduct for Defendants. Proposed class
17 members are predominantly indigent, non-English-speaking children who are being
18 denied basic fairness and/or being discriminated against on the basis of disability in
19 ORR’s prolonging their detention in lieu of releasing them to parents or other
20 proposed custodians, “stepped up” to RTC, secure or medium-secure placement
21 without notice or opportunity to be heard and/or on the basis of disability, and
22 administered psychotropic medications without a parent’s informed consent. The
23 proposed class members are under ORR’s exclusive physical control and often
24 understand little, if anything, about their rights under the *Flores* Settlement, the
25 TVPRA, the Constitution, or Section 504 of the Rehabilitation Act. ORR actively
26 obstructs lawyers from representing members of the proposed class in legal
27 proceedings relating to custody, placement, or release. Unless this matter proceeds as
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1 a class action, the majority of class members have little chance of securing judicial
2 review of the policies and practices challenged herein.

3 100. Defendants, their agents, employees, and predecessors and successors in
4 office have acted or refused to act, and will continue to act or refuse to act, on grounds
5 generally applicable to the class, thereby making injunctive relief and corresponding
6 declaratory relief appropriate with respect to the class as a whole. Plaintiffs will
7 vigorously represent the interests of unnamed class members. All members of the
8 proposed class will benefit by this action. The interests of the named Plaintiffs and
9 those of the proposed class members are identical.

10 101. Plaintiffs are represented by experienced and reputable lawyers
11 associated with non-profit public interest law firms and an international law firm
12 serving *pro bono publico*. Plaintiffs' counsel includes attorneys with years of
13 experience litigating complex suits and class actions on behalf of children and foreign
14 nationals, including counsel for the plaintiff class in *Flores v. Sessions*.

15 VI.

16 ORR POLICY & PRACTICE VIOLATES DUE PROCESS

17 A. Defendants have violated Plaintiffs' due process and family association rights,
18 the TVPRA, and the Flores Settlement in determining custodians' fitness.

19 102. When children are held in government custody apart from their primary
20 caregivers for long periods, they suffer profound and long-lasting injury. The
21 American Academy of Pediatrics has explained that “highly stressful experiences,
22 like family separation, can cause irreparable harm, disrupting a child’s brain
23 architecture and affecting his or her short- and long-term health. This type of
24 prolonged exposure to serious stress—known as toxic stress—can carry lifelong
25 consequences for children.” Toxic stress is associated with increased rates of mental
26 health issues, risky health behaviors, and physical illness such as diabetes, cancer,
27 posttraumatic stress disorder (“PTSD”), and heart disease. Studies of immigrant
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1 children detained in the United States have discovered high rates of PTSD, anxiety,
2 depression, and suicidal ideation. A primary factor in recovering from such trauma is
3 reunification with a parent or other trusted adult. Without the presence of trusted
4 caregivers, children are often unable to cope with the psychological trauma and stress
5 associated with detention.

6 103. Paragraph 14 of the *Flores* Settlement requires ORR to release children
7 from immigration-related custody “without unnecessary delay” so long as their
8 continued detention is not required to secure availability for removal or to protect
9 safety. Paragraph 18 of the Settlement requires ORR to make “prompt and continuous
10 efforts” toward family reunifications and to release children to suitable custodians
11 without unnecessary delay.

12 104. Similarly, § 235(c)(2)(A) of the TVPRA, codified at 8 U.S.C.
13 1232(c)(2)(A), requires ORR to “promptly” place detained children “in the least
14 restrictive setting that is in the best interest of the child,” generally, with “a suitable
15 family member” TVPRA § 235(c)(3)(A) provides, “[A]n unaccompanied alien
16 child may not be placed with a person or entity unless the Secretary of Health and
17 Human Services makes a determination that the proposed custodian is capable of
18 providing for the child’s physical and mental well-being.”

19 105. Paragraph 24A of the *Flores* Settlement guarantees detained children the
20 right to a hearing during which an immigration judge reviews whether they may be
21 continued in custody because they are dangerous or unusually likely to abscond.
22 However, neither the *Flores* Settlement nor the TVPRA prescribe what process is due
23 where ORR unreasonably prolongs a juvenile’s detention or refuses to release him or
24 her because ORR questions whether an available parent or other potential custodian
25 is capable of providing for the child’s physical and mental well-being.

26 106. Plaintiffs have substantial liberty interests in being free from government
27 custody, in preserving their family unity and the ability for their family to care for
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1 them, and in family association. Defendants may not abridge these liberty interests
2 without appropriate procedures to protect against erroneous deprivation.

3 107. Plaintiffs have a fundamental right to the supervision, companionship,
4 and care of their parents. Absent a showing of parental unfitness, the government may
5 not keep children from their parents or refuse to release children into the custody of
6 their parents.

7 108. As a matter of both policy and practice, ORR does not make prompt and
8 continuous efforts toward family reunification and the release of children in its
9 custody. Instead, it delays or refuses to make determinations about whether proposed
10 custodians are or may be unfit.

11 109. As a matter of both policy and practice, ORR affords Plaintiffs and their
12 proposed class members little or no procedural protection against prolonged detention
13 on the ground that their parents or other proposed custodians are or may be unfit.
14 ORR's nominal procedures for vetting detained children's parents or other proposed
15 custodians do not appear in the Code of Federal Regulations, nor even in a semi-
16 permanent practice manual. Rather, they appear on ORR's web page,
17 [www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-](http://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2)
18 [section-2](http://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2) (last visited September 7, 2018), and are subject to change without prior
19 notice or opportunity for comment. Under its nominal procedures —

- 20 (a) ORR does not decide within any time certain whether a detained minor's
21 parent or other proposed custodian is suitable;
- 22 (b) ORR does not provide a detained minor, or his or her parent or other
23 proposed custodian, an opportunity to inspect or rebut evidence
24 derogatory of the proposed custodian's fitness;
- 25 (c) ORR does not afford a detained minor or his or her proposed custodian
26 a hearing before a neutral and detached decisionmaker either before or
27 after ORR declares a potential custodian unfit;
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- 1 (d) Once ORR decides a proposed custodian is unsuitable, it need not inform
- 2 a detained minor or the proposed custodian of its decision for up to 30
- 3 days;
- 4 (e) ORR allows detained minors no appeal or other administrative recourse
- 5 from its finding a proposed custodian unsuitable, though such a decision
- 6 nearly always prolongs the minor's detention;
- 7 (f) Except for parents and legal guardians, ORR allows rejected custodians
- 8 no appeal from a decision declaring them unfit, which nearly always
- 9 prolongs an affected minor's detention;
- 10 (g) As for parents and legal guardians, ORR's policy requires them to submit
- 11 a written request to HHS's Assistant Secretary for Children and Families
- 12 to be heard regarding ORR's declaring them unfit, but a hearing need not
- 13 be convened within any time certain.

14 110. Whether a parent or other custodian is qualified to care for a child is a
15 matter generally committed to state and local governments. Plaintiffs are informed
16 and believe that in all fifty states and their subdivisions, children may not be detained
17 for want of a qualified custodian without affording them and/or their parents or other
18 potential custodians a prompt hearing before a judge or other neutral and detached
19 decisionmaker, during which allegations of unfitness are tested via trial-like
20 procedures and any ensuing finding of unsuitability must be based on competent
21 evidence.

22 111. In contrast, in refusing to release Plaintiffs and those similarly situated
23 to parents and other available custodians on grounds of fitness, ORR provides neither
24 Plaintiffs nor those similarly situated —

- 25 (a) an evidentiary hearing;
- 26 (b) the right to review or rebut adverse witnesses and evidence;
- 27 (c) appointed counsel, guardians *ad litem*, or interpreters;

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- 1 (d) a finding of suitability or lack thereof by a neutral and detached decision-
- 2 maker under defined and consistent legal standards;
- 3 (e) the right to a prompt determination of a proposed custodian's fitness; or
- 4 (f) the right to appeal administratively adverse decisions.

5 112. In practice, ORR often refuses to decide whether a detained child's
6 proposed custodian is fit, thereby needlessly prolonging detention and family
7 separation.

8 113. On information and belief, Plaintiffs allege that, to date, HHS's Assistant
9 Secretary for Children and Families has never convened an actual hearing before a
10 neutral arbiter to review a decision by ORR declaring a detained child's proposed
11 custodian unsuitable.

12 114. ORR's procedures for determining whether parents and other proposed
13 custodians are suitable creates an unreasonable risk that Plaintiffs and those
14 similarly situated will be erroneously —

- 15 (a) subjected to prolonged detention;
- 16 (b) placed in overly restrictive settings that are not in their best interests;
- 17 (c) administered psychotropic medications; and
- 18 (d) separated from parents and family.

19 115. As a direct and proximate result of ORR's torpid, opaque, and
20 perfunctory procedures for declaring detained children's parents and other proposed
21 custodians unsuitable, Plaintiffs and those similarly situated have been and will be
22 erroneously —

- 23 (a) subjected to prolonged detention;
- 24 (b) placed in overly restrictive settings that are not in their best interests;
- 25 (c) administered psychotropic medications; and
- 26 (d) separated from parents and family.

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1 116. The government’s refusing to release children to their parents’ custody,
2 or to the custody of adult siblings and other family members, deprives plaintiffs of
3 their fundamental rights without any reasonable justification or legitimate purpose,
4 violates the substantive and procedural components of the Due Process Clause, and
5 violates the freedom of association clause of the First Amendment. In prolonging the
6 separation of children from their proposed custodians, Defendants also compromise
7 the short and long-term health of Plaintiffs and those similarly situated.

8 B. Defendants have violated Plaintiffs’ due process rights, the TVPRA, and the
9 Flores Settlement by placing them in unlicensed placements.

10 117. Definition 6 and paragraph 19 of the *Flores* Settlement require ORR to
11 place a detained child in a non-secure facility holding a state license to care for
12 dependent children except in circumstances enumerated in Settlement paragraph 21:
13 *i.e.*, the child has committed a violent crime or non-petty delinquent act, has
14 threatened violence during federal custody, is an unusual escape-risk, or is so
15 disruptive that secure confinement is necessary to ensure the welfare of the minor or
16 others.

17 118. Section 235(c)(2)(A) of the TVPRA similarly requires ORR to place
18 detained children promptly “in the least restrictive setting that is in the best interest
19 of the child . . .” and bars its placing a child “in a secure facility absent a determination
20 that the child poses a danger to self or others or has been charged with having
21 committed a criminal offense.”

22 119. TVPRA § 235(c)(2)(A) provides, “The placement of a child in a secure
23 facility shall be reviewed, at a minimum, on a monthly basis, in accordance with
24 procedures prescribed by the Secretary, to determine if such placement remains
25 warranted.” The TVPRA is otherwise silent with respect to what process is due when
26 ORR places or continues a child in an RTC, medium-secure or secure facility.

1 120. Federal law and policy recognize that both children and communities are
2 better off when children are not needlessly incarcerated. A vast body of research has
3 established that detaining children interferes with healthy development, exposes
4 youth to abuse, undermines educational attainment, makes children with mental
5 health needs worse off, and puts children at greater risk of self-harm. Juvenile
6 detention facilities often respond to threats of self-harm in ways that further endanger
7 youth, such as by placing them in isolation. Schooling children receive during
8 detention is often substandard, which places them at serious disadvantage when they
9 enter school after having been detained for substantial periods. Research has
10 demonstrated that incarceration also exacerbates pre-existing trauma.

11 121. The vast majority of children who end up in secure custody through ORR
12 have never been charged, let alone convicted, of crimes in the U.S. or in their home
13 country. Often, ORR places the most vulnerable children—those with the greatest
14 mental health needs—in medium secure, secure or RTC facilities. Prolonging the
15 detention of children with mental health needs in such facilities is profoundly
16 injurious. ORR’s detaining children in such facilities exacerbates mental health issues
17 to the point that ORR eventually consigns children to mental hospitals.

18 122. The Fifth Amendment’s Due Process Clause protects children’s freedom
19 from unnecessary physical restraint, including placement in RTCs, medium-secure or
20 secure facilities. ORR’s placing children in such facilities is constrained by due
21 process, which requires adequate procedural protections to ensure that ORR’s
22 asserted justification for such placement outweighs children’s constitutionally
23 protected interest in avoiding excessive physical restraint. Due process requires that
24 ORR give Plaintiffs and their proposed class members meaningful notice and an
25 opportunity to be heard before it places them in RTCs, medium-secure or secure
26 facilities and an ongoing review with commensurate protections every thirty days.

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1 123. As a matter of policy and practice, Defendant ORR affords detained
2 children wholly inadequate procedural protection against erroneous placement in
3 RTCs, secure or medium-secure facilities. ORR’s procedures for initially placing a
4 child in an RTC, secure or medium-secure facility and for periodically reviewing the
5 need for such placements appear nowhere in the Code of Federal Regulations. Rather,
6 they appear on ORR’s web page and are subject to change without prior notice or
7 opportunity for public comment.

8 124. In practice, ORR’s placing children in RTCs, secure or medium-secure
9 facilities results from an opaque and peremptory process in which youth are
10 summarily “stepped up” to such facilities without any meaningful opportunity to be
11 heard, either before or after being stepped up, regarding the reasons for placing them
12 in such facilities. In placing children in RTCs, secure and medium-secure facilities,
13 ORR provides neither Plaintiffs nor those similarly situated —

- 14 (a) an evidentiary hearing;
- 15 (b) notice of the placement decision or individualized reasoning therefor;
- 16 (c) an opportunity to present evidence and witnesses;
- 17 (d) the right to a neutral adjudicator;
- 18 (e) an opportunity to review or rebut adverse witnesses and evidence;
- 19 (f) the right to counsel, guardians *ad litem*, or interpreters;
- 20 (g) a finding of dangerousness or other adequate cause for such placement
21 under coherent and consistent legal standards;
- 22 (h) the right to appeal administratively from adverse decisions; or
- 23 (i) a monthly review of whether their placement in RTCs, medium-secure,
24 or secure facilities remains warranted.

25 125. Pursuant to paragraph 24A of the *Flores* Settlement and orders issued by
26 the District Court for the Central District of California, immigration judges may
27 review ORR’s decisions to continue detaining children in federal custody on grounds
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1 they are dangerous or unusual flight-risks. ORR regularly places children in RTCs,
2 secure and medium-secure facilities on the ground that they are dangerous or unusual
3 flight-risks, contrary to immigration judges' determinations that they are neither.

4 126. Plaintiffs are informed and believe that in all fifty states and their
5 subdivisions, it is unlawful to place children in RTCs, secure or medium-secure
6 facilities without affording them a prompt and meaningful opportunity to be heard
7 before a neutral and detached decisionmaker regarding the grounds for such
8 placement.

9 127. The lack of procedural protection against erroneous ORR decisions to
10 place children in RTCs, secure and medium-secure facilities creates an unreasonable
11 risk that youth will be placed in overly restrictive settings against their best interests,
12 subjected to needless restrictions on their personal liberty, and unjustly suffer the
13 trauma and stigma of imprisonment. As a direct and proximate result of ORR's
14 peremptorily consigning children to RTCs, secure and medium-secure facilities,
15 Plaintiffs and their proposed class members have been and are being erroneously:
16 (a) placed in restrictive settings against their best interests; (b) subjected to excessive
17 restrictions on their personal liberty; and (c) subjected to the trauma and stigma of
18 imprisonment.

19 128. Placement in RTCs, secure and medium-secure facilities further injures
20 Plaintiffs and those similarly situated because ORR, as a matter of policy and practice,
21 delays release to parents and other reputable custodians of youth whom it has ever
22 confined in such facilities, even when such placement is based on incomplete,
23 inaccurate, or erroneous evidence, and even if ORR subsequently transfers a child to
24 a non-secure dependent care facility.

25 129. As a matter of policy and practice, ORR has refused to release children
26 whom it has ever placed in a secure or medium-secure facility until and unless its
27 director or his designee approves release. In practice, this policy prolongs non-

1 dangerous children’s detention for weeks or months notwithstanding that parents or
2 other reputable custodians are available to care for them.

3 130. As a matter of policy and practice, ORR refuses to release children whom
4 it has placed in RTCs until and unless RTC medical personnel declare the child
5 mentally fit. ORR affords children no hearing or other meaningful procedural
6 recourse when RTC medical personnel refuse to declare them mentally fit. As a direct
7 and proximate result of said policy and practice, children placed in RTCs suffer the
8 functional equivalent of indefinite civil commitment without due process of law.

9 131. On information and belief, Plaintiffs further allege that ORR regularly
10 insists that the parents and other potential custodians possess novel and superfluous
11 qualifications to receive custody of children whom ORR has ever placed in an RTC,
12 secure or medium-secure facility. Such qualifications include being cancer-free,
13 having income sufficient to supply released children with psychotropic drugs,
14 repetitive fingerprinting, and supplying fingerprints of third parties who do not reside
15 in the proposed custodian’s home. As a direct and proximate result of said policy and
16 practice, children placed in RTCs, secure and medium-secure facilities have been and
17 are being erroneously: (a) placed in restrictive settings against their best interests; and
18 (b) subjected to excessive restrictions on their personal liberty.

19 C. Defendants have subjected Plaintiffs to the administration of psychotropic
20 drugs without having procedural safeguards in place, including obtaining
21 informed consent.

22 132. Paragraph 7 of the *Flores* Settlement provides in pertinent part: “The
23 INS shall assess minors to determine if they have special needs ...” A child may have
24 special needs “due to drug or alcohol abuse, serious emotional disturbance, mental
25 illness or retardation, or a physical condition or chronic illness that requires special
26 services or treatment.” Paragraph 12 of the *Flores* Settlement provides in pertinent
27 part: “Following arrest, the INS shall hold minors in facilities that are safe and sanitary
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1 and that are consistent with the INS’s concern for the particular vulnerability of
2 minors.” The *Flores* Settlement further provides that facilities in which ORR places
3 children with mental health needs must “meet those standards . . . set forth in Exhibit
4 1.” *Flores* Settlement ¶¶ 6, 8. Exhibit 1 requires that licensed programs “comply with
5 all applicable state child welfare laws and regulations . . . and shall provide or arrange
6 for the following services for each minor in its care: . . . appropriate mental health
7 interventions when necessary.”

8 133. Section 235(c)(2) of the TVPRA requires ORR to provide children in its
9 custody with safe and secure placements. Placements that involve the unnecessary or
10 coerced administration of psychotropic medications are neither “safe” nor “secure.”

11 134. The *Flores* Settlement incorporates by reference relevant law of the state
12 in which children are placed and thereby requires ORR to comply with applicable
13 child welfare laws and regulations when administering psychotropic medications to
14 Plaintiffs and those similarly situated. Plaintiffs are informed and believe, and on such
15 basis allege, that the laws of all states in which ORR places Plaintiffs and those
16 similarly situated require ORR to obtain informed parental consent or its lawful
17 equivalent when administering psychotropic medications to minors.

18 135. For example, Texas Administrative Code sections 748.2001(b),
19 748.2253, 748.2255 require informed consent be provided prior to administering
20 psychotropic drugs to children in state custody. Texas Family Code section
21 266.004(a) provides that before children in the care of the Texas Department of
22 Family and Protective Services may receive medical care, someone authorized by a
23 court must provide consent.

24 136. Similarly, California Welfare and Institutions Code sections 369.5(a)(1)
25 and 739.5(a)(1) provide that only a juvenile court may lawfully authorize the
26 administration of psychotropic medication to children who are in state custody, unless
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1 the juvenile court specifically authorizes a parent to do so after making specific
2 findings regarding the parent’s fitness and capacity to do so.

3 137. Plaintiffs and their proposed class members have a substantial liberty
4 interest protected by the Due Process Clause of the Fifth Amendment in being free
5 from the unauthorized and unnecessary administration of psychotropic medications.
6 Plaintiffs are entitled to constitutionally sufficient procedures to protect against
7 erroneous deprivation of this interest.

8 138. Psychotropic medications are powerful drugs that act on the central
9 nervous system and affect cognition, emotions, and behavior. Such drugs should only
10 be administered in combination with other mental health supports to treat specifically
11 diagnosed psychiatric illnesses and mental health disorders. Few psychotropic
12 medications have been approved by the FDA as safe and effective to treat children,
13 and careful oversight and monitoring is accordingly required when children are given
14 such drugs. Such medications should not be used as chemical straitjackets to control
15 behavior.

16 139. Serious, long-lasting adverse effects are common for individuals given
17 psychotropic medications. The full risks of giving such drugs to children are not well
18 understood, although psychotropics are known to cause serious and sometimes
19 irreversible side effects in adults, including psychosis, seizures, movement disorders,
20 suicidal ideation, aggression, extreme weight gain, and organ damage. Increasing the
21 number of psychotropic drugs children take concurrently increases the likelihood of
22 adverse reactions and long-term side effects. Close and continuing scrutiny of
23 children given such medications is therefore critical.

24 140. As a matter of policy and practice, ORR authorizes and condones the
25 administration of psychotropic drugs to children entirely without procedural
26 safeguards, including informed parental consent. Rather, ORR authorizes detention
27 facility staff to “consent” to the involuntary, long-term administration of psychotropic
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1 drugs to juveniles in their parents’ stead, even when such parents are readily available
2 to ORR and/or the detention facility to give or withhold such consent.

3 141. As a matter of policy and practice, ORR also fails to provide any
4 substantial procedural safeguards against unnecessary or unauthorized administration
5 of psychotropic drugs to children in its custody. At a minimum, such safeguards must
6 include a neutral decisionmaker’s approval of the initial decision to administer
7 psychotropics to a child, as well as periodic reviews to ensure that youth are not
8 administered psychotropic medications unnecessarily, for too long, at harmful
9 dosages or in harmful combinations.

10 142. On information and belief, Plaintiffs allege that ORR failed to have any
11 of these procedural safeguards in place prior to administering psychotropic
12 medications to the named Plaintiffs. In addition, the psychiatrist who currently
13 prescribes psychotropic medications to children at ORR’s Shiloh RTC, Dr. Javier
14 Ruíz-Nazario, has received payments from drug companies that manufacture
15 psychotropic drugs given to children at Shiloh RTC.

16 D. Defendants have obstructed Plaintiffs’ access to counsel.

17 143. Paragraph 24A of the *Flores* Settlement requires ORR to give detained
18 children a hearing before an immigration judge to review whether they are dangerous
19 or likely to abscond. Settlement paragraph 24D provides that Defendants must
20 “promptly provide each minor not released with . . . the list of free legal services
21 providers compiled pursuant to INS regulation” Exhibit 1, paragraph 14 of the
22 *Flores* Settlement requires licensed facilities in which Defendants detain minors to
23 provide “information regarding the availability of free legal assistance, the right to be
24 represented by counsel at no expense to the government” Exhibit 6 of the *Flores*
25 Settlement advises detained minors, “If you believe that you have not been properly
26 placed or that you have been treated improperly, you may ask a federal judge to review
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1 your case. You may call a lawyer to help you do this. If you cannot afford a lawyer,
2 you may call one from the list of free legal services given to you with this form.”

3 144. Section 235(c)(5) of the TVPRA directs Defendant HHS Secretary to
4 “ensure, to the greatest extent practicable and consistent with section 292 of the
5 Immigration and Nationality Act (8 U.S.C. § 1362), that all unaccompanied alien
6 children who are or have been in the custody of the Secretary or the Secretary of
7 Homeland Security, and who are not [from contiguous countries], have counsel to
8 represent them in legal proceedings or matters and protect them from
9 mistreatment” Section 279(b)(A) of the HSA makes ORR responsible for
10 “developing a plan to be submitted to Congress on how to ensure that qualified and
11 independent legal counsel is timely appointed to represent the interests of each such
12 [unaccompanied alien] child” Immigration regulations, including 8 C.F.R.
13 §§ 287.3(c), 1003.62, 1240.10(a)(2) and 1292.1 *et seq.*, generally guarantee Plaintiffs
14 and their proposed class members the right to be represented by retained and *pro bono*
15 counsel in proceedings before U.S. Citizenship and Immigration Services and the
16 Executive Office for Immigration Review.

17 145. In furtherance of TVPRA § 235(c)(5), Defendant HHS contracts with the
18 Vera Institute of Justice (“VIJ”), a non-profit organization, to coordinate the delivery
19 of free legal services to unaccompanied children from non-contiguous countries who
20 are or have been in ORR custody. VIJ in turn subcontracts with non-profit legal aid
21 providers to counsel and represent such children in applying for affirmative
22 immigration benefits, such as asylum or Special Immigrant Juvenile Status, and in
23 asserting other defenses against removal.

24 146. In many regions of the country, VIJ-funded legal services providers are
25 the only legal counsel available to juveniles in ORR custody. Plaintiffs and the
26 members of the proposed class are almost uniformly indigent, speak little or no
27 English, and have little or no ability to represent themselves in hearings pursuant to
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1 paragraph 24A of the *Flores* Settlement or in any other legal proceedings involving
2 ORR’s custody, release, placement or medication decisions.

3 147. On information and belief, ORR has no eligibility standards for
4 providing VIJ-funded legal services to detained children. Rather, ORR exercises
5 opaque and arbitrary discretion to prescribe those legal matters or proceedings in
6 which VIJ-funded legal providers may represent detained children and those in which
7 they may not.

8 148. As a matter of policy and practice, ORR routinely bars VIJ-funded legal
9 services providers from representing unaccompanied children from non-contiguous
10 countries in legal proceedings involving ORR’s custody, release, placement, and
11 medication decisions, even when such legal services providers have the time and
12 desire to undertake such representation.

13 149. Legal proceedings involving ORR’s custody, release, placement, and
14 medication decisions, including hearings pursuant to paragraph 24A of the *Flores*
15 Settlement, are “legal proceedings or matters” within the meaning of TVPRA
16 § 235(c)(5).

17 150. By blocking VIJ-funded legal services providers from representing
18 children in legal proceedings involving ORR’s custody, release, placement and
19 medication decisions, ORR forces Plaintiffs and those similarly situated to fend for
20 themselves in a complex and foreign adversarial legal system with little hope of
21 prevailing. Without meaningful access to counsel, Plaintiffs and those similarly
22 situated are denied a fair chance of succeeding in legal challenges to ORR’s custody,
23 release, placement and medication decisions and, *a fortiori*, suffer prolonged
24 detention and the harms extended confinement and family separation inflicts. ORR
25 deprives youth of liberty for years, which is comparable to imprisonment for a felony
26 conviction.

1 151. In blocking Plaintiffs and those similarly situated from receiving
2 assistance in legal matters and proceedings involving ORR’s custody, placement,
3 medication, and release decisions, ORR acts arbitrarily, capriciously, abusively of
4 discretion, and contrary to children’s best interests, and obstructs lawyers from
5 discharging their duty of zealous representation.

6 152. As a direct and proximate result of ORR’s blocking VIJ-funded legal
7 services providers from representing Plaintiffs and those similarly situated children
8 in legal proceedings involving ORR’s custody, release, placement, or medication
9 decisions, including hearings pursuant to paragraph 24A of the *Flores* Settlement,
10 Plaintiffs and those similarly situated are being: (a) improperly administered
11 psychotropic drugs; (b) erroneously denied placement in the least restrictive setting
12 that is in their best interest and appropriate to their needs; and (c) erroneously denied
13 release to available custodians without unnecessary delay.

14 VII.

15 A. Defendants have violated Plaintiffs’ rights under Section 504 by unnecessarily
16 placing them in restrictive settings on the basis of disability.

17 153. Under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, “[n]o
18 otherwise qualified individual with a disability . . . shall, solely by reason of her or
19 his disability, be excluded from the participation in, be denied the benefits of, or be
20 subjected to discrimination under any program or activity receiving Federal financial
21 assistance or under any program or activity conducted by any Executive agency”

22 154. Members of the Plaintiff class are qualified individuals with disabilities
23 because they have, have a record of having, and/or are regarded as having a physical
24 or mental impairment which substantially limits one or more major life activities, such
25 as caring for one’s self, learning, and working, and because they are unaccompanied
26 alien children whose placement, care, custody, and release is the responsibility of
27 ORR. 45 C.F.R. § 84.3(j), (l).

1 155. ORR’s placement, care, custody, and release of immigrant children is a
2 program or activity conducted by an Executive agency and which receives Federal
3 financial assistance.

4 156. HHS regulations implementing Section 504 prohibit any entity receiving
5 federal financial assistance from “[a]fford[ing] a qualified handicapped person an
6 opportunity to participate in or benefit from [an] aid, benefit, or service that is not
7 equal to that afforded others;” “[p]rovid[ing] a qualified handicapped person with an
8 aid, benefit, or service that is not as effective as that provided to others;”
9 “[p]rovid[ing] different or separate aid, benefits, or services to handicapped persons
10 or to any class of handicapped persons unless such action is necessary to provide
11 qualified handicapped persons with aid, benefits, or services that are as effective as
12 those provided to others;” and “[o]therwise limit[ing] a qualified handicapped person
13 in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others
14 receiving an aid, benefit, or service.” 45 C.F.R. § 84.4(b)(1)(ii), (iii), (iv), (vii).

15 157. The aids, benefits, and services ORR provides to immigrant children
16 need not “produce the identical result . . . for handicapped and nonhandicapped
17 persons, but [they] must afford handicapped persons equal opportunity to obtain the
18 same result, to gain the same benefit, or to reach the same level of achievement, in
19 the most integrated setting appropriate to the person’s needs.” 45 C.F.R. § 84.4(b)(2).

20 158. Upon information and belief, as a matter of both policy and practice,
21 ORR is not equipped to provide even minimal mental health services or supports to
22 children it places in most shelters.

23 159. As a matter of both policy and practice, ORR therefore steps up children
24 who need such services and supports, or whom shelter staff believe need such services
25 and supports, to more restrictive placements, including secure facilities, medium
26 secure facilities, or RTCs. ORR licenses only two RTCs in the entire country, so such
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1 a placement often results in ORR abruptly separating young people with mental health
2 needs or perceived needs from their peers and transporting them across the country.

3 160. ORR steps up some children with minimal mental health needs,
4 including children who require counseling or medication management that could be
5 effectively provided in a shelter setting.

6 161. Members of the Plaintiff class who have or are perceived to have a
7 behavioral, mental health, intellectual, and/or developmental disability and whose
8 needs therefore exceed or are perceived to exceed the resources of ORR shelters are
9 consequently segregated from their non-disabled peers on the basis of their disabilities
10 and are unnecessarily placed in restrictive settings, instead of the most integrated
11 setting appropriate to their needs.

12 162. In warehousing youth with disabilities in secure facilities, medium
13 secure facilities, and RTCs, instead of providing them appropriate mental health
14 services in the most integrated setting appropriate to their needs, Defendants
15 unlawfully discriminate against youth on the basis of disability in violation of Section
16 504 of the Rehabilitation Act.

17 B. Defendants have violated Plaintiffs' rights under Section 504 by delaying
18 and/or obstructing their release because of disability.

19 163. Under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, “[n]o
20 otherwise qualified individual with a disability . . . shall, solely by reason of her or
21 his disability, be excluded from the participation in, be denied the benefits of, or be
22 subjected to discrimination under any program or activity receiving Federal financial
23 assistance or under any program or activity conducted by any Executive agency. . . .”

24 164. Members of the Plaintiff class are qualified individuals with disabilities
25 because they have, have a record of having, and/or are regarded as having a physical
26 or mental impairment which substantially limits one or more major life activities, such
27 as caring for one’s self, learning, and working, and because they are unaccompanied
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1 alien children whose placement, care, custody, and release is the responsibility of
2 ORR. 45 C.F.R. § 84.3(j), (l).

3 165. ORR’s placement, care, custody, and release of immigrant children is a
4 program or activity conducted by an Executive agency and which receives Federal
5 financial assistance.

6 166. HHS regulations implementing Section 504 prohibit any entity receiving
7 federal financial assistance from “[a]fford[ing] a qualified handicapped person an
8 opportunity to participate in or benefit from [an] aid, benefit, or service that is not
9 equal to that afforded others;” “[p]rovid[ing] a qualified handicapped person with an
10 aid, benefit, or service that is not as effective as that provided to others;”
11 “[p]rovid[ing] different or separate aid, benefits, or services to handicapped persons
12 or to any class of handicapped persons unless such action is necessary to provide
13 qualified handicapped persons with aid, benefits, or services that are as effective as
14 those provided to others;” and “[o]therwise limit[ing] a qualified handicapped person
15 in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others
16 receiving an aid, benefit, or service.” 45 C.F.R. § 84.4(b)(1)(ii), (iii), (iv), (vii).

17 167. “A recipient may not, directly or through contractual or other
18 arrangements, utilize criteria or methods of administration (i) that have the effect of
19 subjecting qualified handicapped persons to discrimination on the basis of handicap,
20 [or] (ii) that have the purpose or effect of defeating or substantially impairing
21 accomplishment of the objectives of the recipient’s program or activity with respect
22 to handicapped persons.” 45 C.F.R. § 84.4(b)(4).

23 168. The methods of administration utilized by Defendants in providing for
24 the placement, care, custody, and release of immigrant children discriminate on the
25 basis of disability. They further have the effect of substantially impairing
26 accomplishment of the objective of release to an appropriate sponsor with respect to
27 children with disabilities.

1 169. Upon information and belief, as a matter of policy and practice, ORR is
2 not equipped to provide even minimal mental health services or supports to children
3 it places in most shelters.

4 170. As a matter of policy and practice, ORR steps up children who need
5 mental health services and supports, or whom shelter staff believe need such services
6 and supports, to more restrictive placements, including secure facilities, medium
7 secure facilities, or RTCs. Members of the Plaintiff class who have or are perceived
8 to have a behavioral, mental health, intellectual, and/or developmental disability are
9 therefore placed in such restrictive placements on the basis of disability.

10 171. Placement in secure facilities, medium-secure facilities, or RTCs delays
11 release to parents and other custodians of youth.

12 172. As a matter of policy and practice, ORR has refused to release children
13 whom it has ever placed in a secure or medium secure facility until and unless its
14 director or his designee approves release. In practice, this policy prolongs children's
15 detention for weeks or months even when parents or other reputable custodians are
16 available to care for them. When children are placed in secure or medium secure
17 facilities because of disability, this policy and practice results in the prolonged
18 detention and separation of children from their families on the basis of disability.

19 173. As a matter of policy and practice, ORR refuses to release children whom
20 it has placed in RTCs until and unless RTC medical personnel declare the child
21 mentally fit. When children are placed in RTCs because of disability, this policy and
22 practice results in the prolonged separation of children from their families on the basis
23 of disability.

24 174. On information and belief, Plaintiffs further allege that ORR regularly
25 insists that the parents and other potential custodians possess novel and superfluous
26 qualifications to receive custody of children whom ORR has ever placed in an RTC,
27 secure, or medium secure facility. When children are placed in restrictive settings
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1 because of disability, such practices result in the prolonged separation of children
2 from their families on the basis of disability.

3 175. Prolonged detention of children with behavioral, mental health,
4 intellectual, and/or developmental disabilities can exacerbate their disabilities and
5 result in deterioration of their mental health. By placing children with disabilities in
6 restrictive settings and prolonging their detention and separation from their families,
7 Defendants exacerbate their symptoms, making it less likely that they will be
8 approved for release, and thereby further prolonging their detention.

9 176. Defendants' methods of administration therefore have the effect of
10 discriminating against children with disabilities and substantially impairing
11 accomplishment of the objectives of ORR's programs and activities with respect to
12 such children in violation of Section 504. Defendants are subjecting children to
13 prolonged detention and separation from their families based on their disabilities.

14 177. Defendants fail to make reasonable accommodations in policies,
15 practices, and procedures that are necessary to avoid discrimination on the basis of
16 disability. Specifically, *inter alia*, Defendants fail to provide adequate and appropriate
17 mental health services in an integrated setting; fail to implement trauma-sensitive
18 policies and procedures for children with disabilities in ORR custody; and fail to
19 afford children with disabilities access to counsel to challenge restrictive placements
20 that prolong their detention.

21 VIII.

22 IRREPARABLE INJURY

23 178. Plaintiffs have suffered and will continue to suffer irreparable harm
24 because of Defendants' policies and practices as challenged herein. ORR has deprived
25 and will continue to deprive Plaintiffs and those similarly situated of their rights under
26 the First and Fifth Amendments, the TVPRA, the *Flores* Settlement, and Section 504
27 of the Rehabilitation Act. ORR confines children to jail-like settings without affording
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1 them a meaningful or timely opportunity to be heard regarding the reasons for such
2 placement; prolongs children's detention on the ground that their parents or other
3 available custodians are or may be unfit, while affording neither detained children nor
4 their proposed custodians a meaningful or timely opportunity to be heard regarding a
5 proposed custodian's fitness; places children in facilities in which it knows they will
6 be administered powerful psychotropic medications without procedural safeguards;
7 blocks lawyers from representing detained children with respect to placement,
8 administration of psychotropic medications, or release to available custodians;
9 unnecessarily places youth in restrictive settings on the basis of disability; and delays
10 and/or obstructs their release on the basis of disability. In doing so, Defendants have
11 profoundly undermined the health and well-being of Plaintiffs and those similarly
12 situated along multiple domains, as described above.

13 IX.

14 FIRST CLAIM FOR RELIEF

15 [DENIAL OF DUE PROCESS: DETERMINING CUSTODIANS' FITNESS]

16 179. Plaintiffs hereby incorporate by reference Paragraphs 1-178 of this
17 Complaint as though fully set forth here.

18 180. As a matter of policy and practice Defendants unreasonably and
19 unnecessarily delay or refuse to release children to parents, close family members,
20 and other available custodians on the ostensible grounds that such custodians are or
21 may be unfit, and they do so without affording detained minors or their proposed
22 custodians a timely, prompt, or meaningful opportunity to be heard regarding such
23 custodians' fitness. Defendants' policies and practices violate the fundamental rights
24 of Plaintiffs and those similarly situated and demonstrate a deliberate indifference to
25 risk of harm to children.

26 181. Such policy and practice individually and collectively violate paragraphs
27 14 and 18 of the *Flores* Settlement, TVPRA § 235(c)(2)(A), the Administrative
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1 Procedure Act, 5 U.S.C. §§ 701 *et seq.*, the procedural and substantive components
2 of the Due Process Clause of the Fifth Amendment of the United States Constitution,
3 and the Freedom of Association Clause of the First Amendment of the United States
4 Constitution.

5 X.

6 SECOND CLAIM FOR RELIEF

7 [DENIAL OF DUE PROCESS: RESTRICTIVE PLACEMENT]

8 182. Plaintiffs hereby incorporate by reference Paragraphs 1-178 of this
9 Complaint as though fully set forth here.

10 183. As a matter of policy and practice, Defendants place Plaintiffs and those
11 similarly situated in RTCs, secure facilities, and medium-secure facilities without
12 affording them a meaningful opportunity to be heard either prior or subsequent to
13 such placement.

14 184. Such policy and practice individually and collectively violate Definition
15 6 and paragraph 19 of the *Flores* Settlement, TVPRA § 235(c)(2)(A), the
16 Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, and the Due Process Clause
17 of the Fifth Amendment to the United States Constitution.

18 XI.

19 THIRD CLAIM FOR RELIEF

20 [UNLAWFUL ADMINISTRATION OF PSYCHOTROPIC DRUGS]

21 185. Plaintiffs hereby incorporate by reference Paragraphs 1-178 of this
22 Complaint as though fully set forth here.

23 186. As a matter of policy and practice, Defendants administer children
24 psychotropic drugs without procedural safeguards, including: obtaining informed
25 consent or the lawful equivalent; involving a neutral decision maker in the initial
26 determination of whether to prescribe psychotropic medications to children in ORR
27 custody; and conducting a periodic review of such treatment decisions to ensure that
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1 youth are not administered psychotropic medications unnecessarily or at harmful
2 dosage levels or in harmful combinations.

3 187. Such policy and practice individually and collectively violate paragraphs
4 6, 8, 12, and 19 and Exhibit 1 of the *Flores* Settlement, the TVPRA, the
5 Administrative Procedure Act, 5 U.S.C. §§ 501 *et seq.*, and the Due Process Clause
6 of the Fifth Amendment to the United States Constitution.

7 XII.

8 FOURTH CLAIM FOR RELIEF

9 [BLOCKING LEGAL ASSISTANCE IN MATTERS RELATING TO CUSTODY,
10 MEDICATION AND RELEASE]

11 188. Plaintiffs hereby incorporate by reference Paragraphs 1-178 of this
12 Complaint as though fully set forth here.

13 189. As a matter of policy and practice, ORR blocks VIJ-funded lawyers from
14 representing Plaintiffs and those similarly situated in legal matters and proceedings
15 involving ORR's decisions regarding custody, release, medication, and placement.

16 190. Such policy and practice individually and collectively violate paragraphs
17 24A and 24D, Exhibit 1 paragraph 14, and Exhibit 6 of the *Flores* Settlement, TVPRA
18 § 235(c)(5), HSA § 279(b)(A), 8 C.F.R. §§ 287.3(c), 1003.62, 1240.10(a)(2) and
19 1292.1 *et seq.*, the Administrative Procedure Act, 5 U.S.C. §§ 501 *et seq.*, and the Due
20 Process Clause of the Fifth Amendment to the United States Constitution.

21 XIII.

22 FIFTH CLAIM FOR RELIEF

23 [DISCRIMINATION ON THE BASIS OF DISABILITY]

24 191. Plaintiffs hereby incorporate by reference Paragraphs 1-178 of this
25 Complaint as though fully set forth here.

26 192. As a matter of policy and practice, ORR places Plaintiffs who have or
27 are perceived to have behavioral, mental health, intellectual and/or developmental
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1 disabilities in restrictive settings, such as secure facilities, medium secure facilities,
2 or RTCs, because of their disabilities.

3 193. As a matter of policy and practice, ORR delays or obstructs the release
4 of Plaintiffs who have or are perceived to have behavioral, mental health, intellectual
5 and/or developmental disabilities to parents, close family members, and other
6 available custodians because of their disabilities.

7 194. Such policy and practice individually and collectively violate Section
8 504 of the Rehabilitation Act.

9 XIV.

10 PRAYER FOR RELIEF

11 WHEREFORE, Plaintiffs pray that this Court —

- 12 1. assume jurisdiction of this cause;
- 13 2. certify this case as a class action on behalf of the class proposed herein;
- 14 3. enter declaratory judgment that Defendants’ policies and practices as
15 challenged herein are unlawful;
- 16 4. issue temporary and permanent injunctions enjoining Defendants
17 from—
 - 18 (a) denying Plaintiffs or their proposed class members due process in
19 evaluating the fitness of parents and other available custodians;
 - 20 (b) denying Plaintiffs or their class members due process in placing them in
21 RTCs, medium-secure or secure facilities;
 - 22 (c) administering psychotropic drugs to Plaintiffs or their class members in
23 non-exigent circumstances without parental consent or the lawful
24 equivalent thereof;
 - 25 (d) blocking Plaintiffs or their class members from receiving legal assistance
26 pursuant to 8 U.S.C. § 1232(c)(5) in hearings in legal proceedings or
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1 matters involving ORR's decisions regarding custody, placement, or
2 release;

3 (e) unnecessarily placing Plaintiffs in restrictive settings on the basis of
4 disability;

5 (f) delaying and/or obstructing Plaintiffs' release on the basis of disability;

6 5. award the named Plaintiffs and their class members nominal damages
7 pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403
8 U.S. 388 (1971);

9 6. award Plaintiffs costs and attorney's fees pursuant to the Equal Access
10 to Justice Act, 28 U.S.C. § 2412; and

11 7. issue such further relief as the Court deems just and proper.

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1 Dated: September 7, 2018

Respectfully submitted,

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